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No. 195.

In the Supreme Court of the United States.

OCTOBER TERM, 1923.

THE UNITED STATES OF AMERICA, APPELLANT,

v.

STATE INVESTMENT COMPANY AND EDWARD B. WHEELER.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

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STATEMENT.

This is a suit by the United States to quiet its title to a tract of land about 3½ miles wide and some 30 miles in length, lying on the west boundary of the Mora Grant in the State of New Mexico. It may be said in passing that the Government has been in possession of the land ever since the acquisition of the Territory of New Mexico in 1848, and since 1898 it has been administered as a part of its national forest (30 Stat. 1773). (R. 5.)

The defendants contend that the land in controversy is a part of the area surveyed and patented as the Mora Grant, and as they are admittedly the

owners of that grant they claim to be owners of the tract in dispute.

The Mora Grant was a community valley grant made by the Mexican authorities September 28, 1835, to seventy-six individuals, and it appears from the act of juridical possession, which is fully set forth in the patent—a proceeding akin to the common-law livery of seizin—that the constitutional justice, who conferred possession, proceeded to the place called De Mora for the purpose of distributing the public land, and that the settlers were also present. This proceeding involved the establishment of boundaries of the tract when there was any uncertainty respecting them. If these were designated in the grant, it required their ascertainment and identification; if they were not thus designated, it required the measurement of the quantity granted and its segregation from the public domain. *Van Reynegan* v. *Bolton*, 95 U. S. 33. The following is quoted from the act of juridical possession:

> The lower valley was called Valle de Santa Gertrudes and the upper one Valle de San Antonio . . . The town site was marked out in both valleys, the one at Santa Gertrudes being two hundred varas from north to south and one hundred and fifty varas from east to west, leaving thirty varas outside for drippage and a common road and the meadow for the benefit of all, with its entrances and exits free. The site of the town of San Antonio contains two thousand varas from north to south and one hundred and fifty varas from east to west,

> leaving the meadow for the benefit of all settlers.

The constitutional justice then states that he—

> proceeded to distribute the land suitable to cultivation, and drawing the line from east to west on the south side of the valley of the Santa Gertrudes there were measured four thousand one hundred varas of land, and on the north in the direction of Tulquillo there were measured one thousand seven hundred varas of land which were distributed among the settlers in the order in which they are arranged on the list.

On the day following at the Valle de San Antonio the line was drawn—

> from the edge of the Cienega toward the west, another was measured and distributed according to the list aforementioned; two thousand eight hundred varas of land in the valley; five hundred and sixty varas at the Lagunita; and two hundred and fifty varas of land opposite the town towards the southwest thereof. . . . the general boundaries of this tract being for the benefit of the grantees and for common pasturage; on the north the Ocate River; on the south to where the Sapeyo empties; on the east the Aguage de la Yegua; and on the west the Estillero. (R. 114.)

Then follows a list of seventy-six names of the settlers to whom grants were made, the quantity granted to each settler varying from fifty to three hundred varas. (R. 115–117.) A vara is approximately thirty-three inches, a square vara being

eighty-four one hundredths of a square yard. The town of San Antonio is shown by the evidence to be the present town of Cleveland, and the plaintiff's evidence also shows that it is the same place that Surveyor Means called Upper Mora. The lands were apparently all measured in two days—those at Santa Gertrudes in one day and those at San Antonio the day following.

Pursuant to the provisions of the Act of July 22, 1854, 10 Stat. 308, the grant was submitted to the Surveyor General of the Territory of New Mexico, who recommended its confirmation (R. 118–121), and it was in fact confirmed by the Act of June 21, 1860, 12 Stat. 71. In his report on the case the surveyor general stated that it had been established that the lands embraced in the metes and bounds set forth in the act of possession had been severed from the public domain. (R. 121.) This evidently referred to the lands which had been measured off for the different settlers and the town sites, because the general metes and bounds mentioned in the act of juridical possession were too vague and indefinite to identify any particular lands, and it was necessary that the lands be identified. *Van Reynegan* v. *Bolton, supra.*

Following the confirmation of the grant by Congress, a contract was made with Thomas Means, United States deputy surveyor, for the survey of the grant, and in execution of that contract Means surveyed in satisfaction of this small community grant, the lands of which were measured and dis-

tributed in two days, a tract of land about 35 by 40 miles in extent, containing in *excess of eight hundred thousand acres*, an area larger than the entire State of Rhode Island and more than one-half as large as Delaware. (Plaintiff's Ex. 2, R. 139.)

The United States issued a patent for the grant August 15, 1876, according to the Means survey, a copy of the plat returned by him and his field notes being incorporated in the patent and made a part thereof. (R. 113 to 138.)

The area conveyed by the patent includes all the land embraced in the plat according to the courses and distances given in Means' field notes, but the defendants contend that Means' courses and distances do not agree with the monuments set by him on the west boundary, and they aver that as these monuments are located with reference to a fixed natural feature—the Pueblo River—the courses and distances must yield to the natural object which is some three and a half miles further west than the field notes show the west boundary to be; consequently, they claim that the west boundary of the grant consists of a north and south line through the place where they allege the monuments were fixed by Surveyor Means when he made the survey in 1861 (R. 9); this, notwithstanding that it would leave a gap of some three and a half miles in both the north and south boundaries and would make the west boundary unnecessarily long.

We are not able to state what Means actually did in making this survey, because none of the surveyors,

either those testifying for the Government or those who testified for the defense, was able to follow him. We can only point out what he said he did. The east boundary of the grant is described as the Agua de la Yegua—which means the Spring of the Mares—and commencing at a spring on the extreme southeast corner of the grant (R. 75) Means ran a line due north some forty-three miles where he is said to have intersected the Ocate River. (R. 85.) From this point he meandered the river in a generally westerly and northwesterly direction until he reached a point where he reports the river as lost in the mountains. (R. 91.) From this latter point he ran thirteen courses where he set a corner marked as meander corner 13 south of Black Lake, some eighty miles from the beginning, and from which he reported the northwest corner to be west a distance of ten miles, 40 chains, 54 links—inaccessible in the mountains. (R. 93.)

From meander corner 13, Means reports he ran a traverse line along the base of the range of mountains forming the west boundary of the grant (R. 94) and in so doing reached the Plaza in Upper Mora, from which place he says the Estillero was pointed out to him, and to which he adds that he ran a line from the Plaza in Upper Mora, the distance reported being 592.30 chains, on a course north forty-two degrees west. (R. 97.)

He then returned to Upper Mora and continued his traverse south and southwest reaching the northwest corner of the Las Vegas Grant on the banks of

the Sapello River. This corner had been established the year before by the survey of Pelham and Clements. From this northwest corner of the Las Vegas Grant Means reported the southwest corner of the Mora Grant to be 2 miles, 3.10 chains west, and 27.39 chains north (R. 99), and that a north and south line through the Estillero would intersect the Sapello River 2 miles, 3.10 chains west of the northwest corner of the Las Vegas Grant.

Means' survey was made in July and August, 1861, and his field notes show that he did not set any monuments at that time on the west boundary but that he returned there in November of that year and then set two stones at the place called the Estillero (R. 107), one of which was marked with the letters W. B. M. G. on the east side and EO on the west side, which will be hereafter referred to as the EO stone. These stones were reported as being near the Pueblo River and they were set 34 chains, 50 links, apart. (R. 108.) According to his field notes it was impracticable to survey any farther on the west boundary, either north or south of the two stones. It should be observed here that in the west boundary of this grant, a line more than thirty miles in length, the only portion of it which was actually run on the ground was this small piece, a little over 34 chains long between the stones alleged to have been set at the Estillero. It will also be observed that Means did not get within ten miles of the place fixed by him as the northwest corner of the grant. This clearly appears

from the field notes of his survey which were introduced in evidence. (R. 93.)

In 1882, more than forty years ago, the Government had surveys made of two townships adjoining the Mora Grant on the west (R. 3), and those public-land surveys were reported as closing upon the Mora Grant at the southwest corner, a distance of a little more than two miles west of the northwest corner of the Las Vegas Grant. (R. 4.) The District Court refused to allow these surveys to be introduced in evidence (R. 17), but permitted plaintiffs' witness Compton to testify that in retracing the lines of the public-land surveys he found the closing corners on the west boundary of the Mora Grant. These surveys would place the west boundary of the Mora Grant a little farther west from the northwest corner of the Las Vegas Grant than the distance reported by Means. (R. 16.)

Thus the matter rested until the year 1902, when John H. Walker, a deputy United States surveyor, was sent to survey some other townships on the west boundary of the Mora Grant, and he reported that he found the monuments set up by Means at the Estillero a distance of some three miles west of the line called for by Means' field notes, and Walker surveyed a line through those stones from the Sapello River on the south as far north as the boundary of the Rio Grande Grant. (R. 34–36.) Walker, however, did not connect this line with either the north or the south boundary of the grant. Some time thereafter, though just when is not dis-

closed by the record, the grant claimants set up a claim to this strip of land, lying between the line of the public-land survey and the Walker line, some three miles in width, extending along the entire west boundary of the grant, and embracing an area of approximately 60,000 acres.

It should be stated here that the Interior Department never approved Walker's survey as the west boundary of the Mora Grant (R. 49), but later, in 1909, sent deputy surveyor Alonzo E. Compton to retrace the east boundaries of the fractional townships that had been surveyed in 1882 and which had then been closed on the west boundary of the grant. This was done by Compton, who surveyed the entire west boundary from the southwest corner to the line on the north, and, as stated above, he testified that he found where the public-land survey had been closed on the Mora Grant at approximately the proper distance from the northwest corner of the Las Vegas Grant (R. 16). The north boundary of the Las Vegas Grant is the same as the south boundary of the Mora as far west as the northwest corner of the former. The northwest corner of the Las Vegas had been recently established by Surveyor Johnson when he resurveyed the north boundary of that grant; and that corner was found and identified by Compton.

The defendants were unable to show that the place of the stones found by Walker was witnessed by the trees described by Means in his field notes. They were unable to find either tree marked as a

witness to the EO stone; but they did show that the two stones were found at the distance from the Pueblo River called for by Means' survey; and they also claim (which, however, we can not concede) that certain other natural features were found to agree with Means' calls, but both surveyors who testified for the defendants—John H. Walker and Vincent K. Jones—admitted on cross-examination that the line run by Walker was a considerable distance west of the line called for by Means' field notes (R. 36, 42); that neither of the stones found by Walker is situated at the base or foot of a mountain; that each stone is up on the side of a mountain quite a distance from the base; and that the land directly north of the EO stone and south of the south stone could be surveyed without difficulty.

The plaintiff introduced in evidence a map showing Means' survey of the grant, and showing also the Compton resurvey, and the location of the Walker line to the west. This map is in the record, marked Plaintiff's Exhibit No. 25. It clearly presents the situation.

The Government showed that the area obtained included substantially the area called for by Means' plat and survey, notwithstanding which the District Court held (R. 58) that the western boundary of the grant was the line run by Walker through the two stones found by him some three and a half miles west of the line upon which the public land surveys were closed in 1882, which was the line retraced by Comp-

ton in 1909, thus adding about 60,000 acres to the patented area. From a decree in accordance with that opinion the Government sued out an appeal to the Circuit Court of Appeals, where the action of the District Court was affirmed (285 Fed. 128). The further appeal of the Government brings the case before this court.

ASSIGNMENT OF ERRORS.

1. The court erred in holding the west boundary of the Mora Grant to be along a line through the so-called EO stones, as found by Deputy Surveyor John H. Walker in the year 1902.

2. The court erred in not holding that the plat attached to the patent shows the west boundary of the grant to be approximately one mile west of the east boundary of range 14 east of the New Mexico principal meridian and that this showing is conclusive.

3. The court erred in refusing to admit in evidence the surveys made in 1882, showing the closings of the public land surveys on the west boundary of the grant.

4. The court erred in refusing to admit in evidence the decisions of the Commissioner of the General Land Office and the Secretary of the Interior, dated October 28 and November 6, 1907, respectively, holding that the west boundary of the Mora Grant was along the line as found by the survey of 1882.

STATEMENT OF THE ARGUMENT.

(1) The court erred in refusing to admit in evidence the plats and field notes showing the closings of the public land surveys on the west boundary of the grant and also in refusing to admit the decisions of the Land Department holding that the west boundary of the grant was along the line run by Surveyor Compton.

(2) The Walker line must be rejected because it was not accepted or approved by the Land Department and because the stones found by Walker do not answer either the calls of the patent or the calls of the grant.

(3) Means' survey was so erroneous as to be fraudulent; indeed, it was no survey at all, and is not binding upon the Government. It follows, therefore, that if the court is not satisfied with the Compton survey it should order a new survey by the Land Department.

ARGUMENT.

I.

The court erred in refusing to admit in evidence the plats and field notes showing the closing of the public-land surveys on the west boundary of the grant and also in refusing to admit the decisions of the land department, holding that the west boundary of the grant was along the line run by Surveyor Compton.

The question as to where on the surface of the earth a surveyor ran a line is plainly a question of fact, and when it involves the survey of public lands

it is such a question as must necessarily be primarily decided by the Interior Department. The Mora Grant was carved out of the public domain, and it was the duty of the Secretary of the Interior to extend the public-land surveys over such lands as were not embraced in the grant; it was also the duty of the Secretary to determine what lands were public lands. *Kirwan* v. *Murphy*, 189 U. S. 35. In the performance of this duty he let a contract in 1882 for the survey of the public lands adjacent to the grant on the west. This the Secretary undoubtedly had the right to do. *Lane* v. *Darlington*, 249 U. S. 331. The deputy surveyors employed to do the work reported that they had closed on the Mora Grant. The return of these surveyors showing where they had found the survey of the Mora Grant was clearly admissible, but the District Court refused to admit it. However, the court did permit Surveyor Compton, who retraced the line in 1909, to testify as to where he found the closing corners, namely, a little more than two miles west of the northwest corner of the Las Vegas Grant.

From the time of the public-land surveys in 1882 until 1902, twenty years later, when John P. Walker reported the finding of the stones several miles west of the line, the line run in 1882 was not questioned as the west boundary of the grant. The plaintiff offered to prove that the Government had disposed of lands lying along this line as public lands of the United States and that later when the location of the line was in issue the Interior Department had adhered

to the Compton line as the west boundary of the grant, but the court refused to admit such offer.

We submit that the action of the court in this regard was clearly erroneous, because, as stated, it was the duty of the Secretary of the Interior to survey the public lands adjoining the grant. While the Secretary may have had no authority to change the line that had been run by Means, still it was his duty to find where that line had been run on the ground, and that is what was done in 1882 and 1909. To say that the Government may not show where the Secretary found the line to be is tantamount to saying that the correctness of his work can not be inquired into.

The power to make and correct surveys of public lands belongs to the political department of the Government and not to the judicial. *Cragin* v. *Powell*, 128 U. S. 691; *Kirwan* v. *Murphy*, 189 U. S. 35. Therefore, the survey of 1882 was admissible on the trial of this cause in 1918 as an archive of the General Land Office, if upon no other ground. *Ayers* v. *Watson*, 137 U. S. 584.

It is stipulated that the Walker survey was not approved by the Interior Department. His location of the Means line was never adopted by the Department, but the latter accepted the Compton survey as the west boundary of the grant. The plaintiff was clearly entitled to show what the Secretary of the Interior had decided on this question, but when the offer was made the court refused to admit it. We confess a difficulty in understanding

this action of the court, as it appears to have been palpably erroneous. It was the duty of the Secretary of the Interior to find where the lands of the grant owners ended and those of the government began, and if his decision thereon is not admissible we are unable to understand how the correctness of his finding can ever be determined.

While Means did not actually run the west boundary of the grant on the ground, it was entirely possible to close the public land surveys on this line, because he had tied his survey to the northwest corner of the Las Vegas Grant, which had been fixed and which was only a little more than two miles east of his southwest corner of the Mora Grant.

II.

The Walker line must be rejected because it was not accepted or approved by the land department and because the stones found by Walker do not answer either the calls of the patent or the calls of the grant.

The Estillero is given as one of the boundaries of the grant. Indeed, it is the only point mentioned on the west boundary; it is also referred to in the patent, and it becomes important, therefore, to define and locate it. So far as we have been able to ascertain, the word seems to have no footing in either the Spanish or English language. This would lead to the inference that it is possibly a proper name, and this finds support in the reference made to it in an act passed by the legislature of the Territory of New Mexico on January 30, 1868, defining

that Means refers to as constituting the west boundary of the grant. But there is one point not to be overlooked. It was pointed out to Means from the plaza in Upper Mora, and therefore it could be seen from the valley.

The place where the stones were found by Walker does not answer to this description because it is too far west, being entirely across the high divide which lies west of the range of mountains constituting the west boundary. That place could not be seen from Cleveland or from any other place in the valley, as it is a considerable distance down the west slope of the main divide. (R. 25, 42.) Moreover, the Estillero, being given as one of the bounds of the grant, the survey of the latter should extend only up to it and should not include it. Even by the testimony of defendants' witnesses the Estillero extended on the south and east to the Alamitos, which is the point where the water of the Pueblo River is brought east to the Mora. This point is several miles east of the place of the Walker stones. The Walker line runs through the extreme western edge of the valley in which the stones were found. The stones are as far west as they could be and still be in the valley. (R. 37.) Hence, even if the Estillero is where the defendants' witnesses claim it to be, the Walker line is entirely too far west, because it runs through the west side of it. According to Walker's own testimony, his line runs through the extreme western edge of the valley.

Where an object of extent is named as a boundary, the side of the object nearest to the bounded tract is to be taken. *Ramon Vigil Grant*, 1 L. D. 288. "The land conveyed extends *to* the flats but not *over* them; and the flats being a bound of the land conveyed are not a part of it." *Storer* v. *Freeman*, 6 Mass. 435, 439. See also *United States* v. *McLaughlin*, 127 U. S. 428.

True, the Walker stones were marked as indicated by Means, and they were found at the proper distance from the Pueblo River, but these are the only particulars in which they conform to calls of Means's survey. A. E. Compton, a witness for plaintiff, testified that there were a number of places where the stones could have been placed in the valley at the proper distance from the river. (R. 27.) But the stones reported by Means agree only roughly in size with those found by Walker. Indeed, the south stone is described by Means as being 18 x 12 x 5 inches (R. 108), while the Walker stone is said to be 15 x 15 x 2½ inches (R. 24).

Means reported that each of the stones was set at the foot of a high mountain over which he could not go; while the Walker stones are 7 or 8 chains up the slope of the mountains, and the slope is no greater above the stones than it is at the place where they were found. Hence there was no reason for Means to set the stones where it is said that Walker found them. (R. 24, 37, 51.)

No witness trees could be found to the Walker EO stone, nor was their absence accounted for. (R. 37.)

Means reported two witness trees to his EO stone-
pine and an aspen—but neither could be found
the Walker stone. (R. 24.)

No witness trees are given by Means to his sou
stone, while the Walker south stone is near the ed
of the timber; and if Means had set a stone there
was his duty to mark trees and refer to them in
field notes.

The distance given by Means to the EO sto
from the trail to Picuris is 2.30 chains, while t
Walker stone is nearly 8 chains from the trail. (
51, 108.)

The line north 42° west which Means reports
ran from the plaza in Upper Mora was over botto
land for a distance of some 32 chains before t
place of the EO stone was reached; while if o
were to start back from the EO stone he wou
immediately encounter high and precipitous mou
tains.

The EO stone of Means was set in a place visib
from Upper Mora in the valley. While the place
the Walker stone can not be seen from any point
the valley, on the line north 42° west they are
miles west from the divide. (R. 25, 27, 42.)

The EO stone of Means was set 20 miles 25.8
chains north of the Sapello River, while the Walk
stone was found only 18 miles 76 chains north of t
river, there being a difference of 1½ miles betwee
the two.

The EO stone of Means was set 38½ miles west
the eastern boundary of the grant, while the Walk

stone was found 42 miles west of the eastern boundary.

The Walker stones, therefore, do not answer either the calls of the grant or the calls of the patent. If Means actually set the stones where Walker is said to have found them, he left a gap of some two or three miles in both the north and south boundaries of the grant; that is to say, his north and south boundaries would lack two or three miles of reaching his west boundary, while his west boundary would be several miles too long. Plaintiff's witnesses Compton and Kirkpatrick, both veterans in the service of the public land surveys, testified that in their opinion the Walker stones were not logically connected with the Means survey. Kirkpatrick went so far as to say that he did not believe Means set the stones. (R. 25, 53.)

The Walker line is not connected with either the north or south boundary of the grant, and if followed up on the north would conflict with the Rio Grande Grant, as is clearly shown by Government Exhibit 25.

III.

Means's survey was so erroneous as to be fraudulent; indeed, it was no survey at all and is not binding upon the Government. It follows therefore, that if the court is not satisfied with the Compton survey it should order a new survey by the Land Department.

In the 123 miles of the east, north, and west boundaries of this grant, the only corners that now can be found of the Means survey are the two stones

said to have been set by him at the Estillero. Th
important 13th meander corner south of Black Lak
could not be found though diligent search wa
made for it by Kirkpatrick and Compton. (R. 17
29, 30.) His alleged traverse from Black Lake by
way of Guadalupita to Upper Mora and thence t
the Estillero could not be followed by any of the
surveyors. (R. 18, 30.) All the witnesses testified
uniformly that they did not believe the line north
42° west was ever run from Upper Mora to the place
of the stones. Means could not have possibly run
that line the same day that he ran the traverse from
Guadalupita to Upper Mora as he reports that he
did. He therefore did not make a complete survey
of the grant. According to his own field notes he
lacked some ten miles of completing the survey of
the north boundary, and he expressly states that
he survyed only 34½ chains on the west boundary,
while the testimony of the witnesses is to the effect
that he did not survey the line to the place where
Walker is said to have found the stones. (R. 41,
44, 25, 28.)

It is impossible to follow his traverse and reach
the place of the stones. Surveyor Jones, defendants'
witness, testified that he did not attempt to trace
Means's line north 42° west from Upper Mora, as
that would be wasted effort. He testified further
that it was idle pastime to tie to the nearest corner of
the grant as so many errors existed in that line. If
Means did set the stones there he set them at random,
and they are not binding on the Government. A

north and south line through his northwest corner will not reach the stones by some two or three miles, and the same thing would be true of the north and south line through his southwest corner.

Assuming, therefore, that Means set the stones where Walker is said to have found them, his survey must be rejected as fraudulent, because he did not survey the traverse line by which he is supposed to have reached the place of the stones.

Means's survey is also erroneous in reporting the course of the Ocate River. He gives several courses of the river as west of south. That is to say, in meandering up the stream he reports his course to be north of east, while the testimony of both Kirkpatrick and Compton is to the effect that nowhere is the course of the river west of south. This might account for Means placing Black Lake north and east of its true location on the ground.

The evidence as a whole inevitably leads to the conclusion that at best Means's location of the west boundary is no more than a guess, and in this situation the stones found by Walker can not be taken as controlling, because it is by no means certain that Means set them where Walker is said to have found them. And even if he did place them there, he set them at random and did not know where he was when he did so. Monuments set in such a manner are not controlling of courses and distances because there is no certainty respecting them.

In *United States* v. *Redondo Development Co.*, 254 Fed. 656, where the work of the surveyor was dis-

credited, as it is here, the Circuit Court of Appeals for the eighth circuit disregarded the monuments and ordered a new survey by the Land Department in accordance with the plat and field notes. In that case there was a deficit of some 10,000 acres in the survey. In this case there was a surplus of approximately 60,000 acres over the quantity shown by the plat and field notes. Just as in that case, the plat and field notes showed the proper area of the claim, so do the plat and field notes here show the area conveyed by the patent; but as in that case the surveyor practiced a gross fraud in marking the boundaries on the ground, so in this case Means practiced a greater fraud upon the Government in locating the west boundary, assuming that he set the stones where Walker is said to have found them. In the case of the *Redondo Development Company* the Circuit Court of Appeals refused to recognize the monuments, and ordered a new survey to agree with the plat and field notes, and that is what should be done in this case provided the court is not satisfied with the Compton survey, which, as connected with Johnson's survey of the south boundary, is the only complete survey that was ever made of the grant.

The Court of Appeals seems to have attached some importance to the fact that the plat of Means's survey showed the west boundary to be through the Estillero, but that proves nothing. It does not show where the Estillero is upon the ground. Neither does it show that the stones are 3½ miles

west of any line called for by his field notes. On the contrary, it indicates that the stones are located on the north and south line which runs through his northwest and southwest corners, and we know that the Walker stones are far west of that line.

In this connection it may be said that the same plat that shows the west boundary of the grant to be through the stones of the Estillero, also shows the west boundary to be only a mile west of the east boundary of range 14 east. Neither is more conclusive than the other, because the maker of the plat did not know where the Estillero was on the ground, nor did he know where the east boundary of range 14 was. The point we wish to make is that if the plat is to be taken as conclusive it definitely fixes the Compton line as the west boundary of the grant.

It should not be overlooked that the line run by the deputy surveyors in 1882 has been regarded as the west boundary of the grant from the time it was run until the question was agitated by the grant claimants about the year 1907, a period of some 25 years. During all that time the land here involved was regarded as public land of the United States and administered accordingly. When the question was raised by the grant claimants about the year 1907, the Interior Department adhered to this line and refused to change it.

It was held by the Circuit Court of Appeals for the Eighth Circuit in *Iowa* v. *Carr*, 191 Fed. 257,

that possession was *prima facie* evidence of title t real estate, and—

> Where the lands of respective owners adjoin and for many years one, with the silen acquiescence of the other, has had possessio and occupation to a certain line between them claiming title, these facts constitute strong evidence of the correctness of the line, and that line should be taken as the correct line in the absence of persuasive countervailing evidence. (Syllabus.)

See also *United States* v. *Stone*, 2 Wall. 525, 537.

So, in *Virginia* v. *Tennessee*, 148 U. S. 503, it was held that a boundary between states, as well as between private parties (p. 522)—

> which has been run out, located and marked upon the earth, and afterwards recognized and acquiesced in by the parties for a long course of years, is conclusive, even if it be ascertained that it varies somewhat from the courses given in the original grant.

The grant claimants have no equities to be considered. They have never been in possession of the land in controversy; and for 25 years after the public-land surveys were closed upon the west boundary in 1882 they set up no claim to it. They have received an area *enormously larger* than that granted by the Mexican authorities, and have no cause to complain. The boundary was fixed by the public-land survey of 1882 and should not be disturbed.

CONCLUSION.

It is respectfully submitted that the decisions of the lower courts should be reversed. If, however, the court is not satisfied with the Compton line, a new survey by the Land Department should be ordered.

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